

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ATARI CORPORATION,) Case No. C-89-0824-FMS
Plaintiff,) San Francisco, California
vs.) Tuesday, March 10, 1992
8:05 A.M.
NINTENDO OF AMERICA, INC.;) JURY TRIAL
NINTENDO CO., LTD.,)
Defendants.)

VOLUME XVIII
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE FERN M. SMITH
UNITED STATES DISTRICT JUDGE

APPEARANCES:

12 For Plaintiff Atari: WILLIAM L. JAEGER
13 MICHAEL N. KHOURIE
14 LAURI DONAHUE
15 ANN JULIUS
16 TIMOTHY F. PERRY
17 Khourie, Crew & Jaeger
18 One Market Plaza
19 Spear Street Tower, 40th Floor
20 San Francisco, CA 94105
21 (415) 777-0333
22
23 For Defendant Nintendo: JOHN J. KIRBY, JR.
24 THOMAS G. GALLATIN, JR.
ROBERT J. GUNTHER, JR.
Mudge, Rose, Guthrie, Alexander
& Ferdon
180 Maiden Lane
New York, NY 10038
(212) 510-7987
25
26 WILLIAM E. TRAUTMAN
27 Brobeck, Phleger & Harrison
28 One Market Plaza
29 Spear Street Tower
30 San Francisco, CA 94105
31 (415) 442-0900

1 went as high as 10 people.

2 Q. Okay. So it is your testimony that at some point between
3 '85 and '89, Ms. Goralcyzk had 10 people on her staff?

4 A. To the best of my recollection, correct.

5 Q. Okay. Well, to the best of your recollection, what was
6 the low point of her staff?

7 A. This is a guess, but I would say maybe as low as three,
8 four people.

9 Q. Okay. Now, Ms. Goralcyzk is also due to be a witness in
10 this case, sir, and we can ask her directly.

11 Now, earlier in the course of your testimony, you were
12 shown a magazine, Atari Explorer that Atari Corp. publishes,
13 right?

14 A. Correct.

15 Q. And is that still published by Atari Corp.?

16 A. Yes, it is.

17 Q. In the period 1988-89, who was the publisher of the Atari
18 Explorer magazine?

19 A. It was Atari Corp.'s magazine.

20 Q. Um-hmm.

21 A. I think -- you said the publisher of the magazine, it
22 used the name David Ahl, or maybe Betsy Staples, but I'm not
23 positive what was in the magazine.

24 Q. Okay. And did they work in Sunnyvale?

25 A. No, they worked in New Jersey.

1 Q. They worked in New Jersey. But they, in the '88-'89 time
2 period published Atari Explorer?

3 A. They were in charge of the publication, correct.

4 Q. Okay. And had they been in charge of the publication
5 ever since its inception?

6 A. No, they were not.

7 Q. All right. When were they placed in charge of Atari
8 Explorer?

9 A. I'm not exactly sure, maybe in '87, '86, I'm not sure of
10 the exact date.

11 Q. Okay, and I take that they no longer are responsible for
12 publishing Atari Explorer, right?

13 A. They're no longer employed by Atari Corporation*.

14 Q. Okay. And when were they terminated?

15 A. I think it was sometime in '89, I think.

16 Q. Okay. Now, Atari Explorer is published four times a
17 year, is that right?

18 A. It sounds correct. I'm not positive of how many publica-
19 tions there are per year.

20 Q. Do you ever read it?

21 A. Yes, I do.

22 Q. Is it fair to say you read it once in a while?

23 A. I read every issue that comes out. Not the whole
24 magazine, but I read the issue.

25 Q. Well, we're going to need this volume of your deposition

1 anyway, Mr. Tramiel, so let me ask for Volume 6 and I'll refer
2 you to page 1358 at lines 9 and 10.

3 (Pause.)

4 Q. Okay, thank you.

5 A. Thank you.

6 Q. Now, you have that in front of you, sir. At line 9, I
7 said,

8 "Did you read Atari Explorer magazine?"

9 And you answered,

10 "Once in a while."

11 Right?

12 A. Correct.

13 Q. And I asked you,

14 "How often did it come out?"

15 And you answered,

16 "I'm not sure, four times a year, I'm not positive."

17 I also asked you,

18 "Was Atari Explorer magazine a video game magazine?"

19 And you answered,

20 "It was a magazine containing information about most
21 of Atari Corp.'s products, including video games."

22 Do you see that?

23 A. Yes, I do.

24 Q. Okay. Now at some point did Atari decide to publish a
25 magazine which was devoted just to video games?

1 A. Yes, we did.

2 Q. And that magazine was called Atarian, right?

3 A. Yes, Atarian.

4 Q. And it's true, is it not sir, that only a few issues of
5 Atarian were ever published, right?

6 A. I think the number was three.

7 Q. And it's true, is it not sir, that you don't remember
8 whether you knew about Nintendo Power magazine at the time
9 Atari decided to publish Atarian, right?

10 A. I don't recall.

11 Q. And the customers who subscribed to Atarian, paid for
12 their subscriptions, didn't they?

13 A. I assume so.

14 Q. And indeed the subscription price for a year was \$15.
15 It included a T-shirt, a sew-on patch, and a club membership
16 card, right?

17 A. That sounds correct.

18 Q. And the Atarian magazine was also put out for Atari Corp.
19 by David Ahl and Betsy Staples, right?

20 A. They were in charge of the publication, correct.

21 Q. Okay and they worked out of New Jersey, just like they
22 did for Atari Explorer, right?

23 A. Correct.

24 Q. Now it's fair to say, is it not sir, that the relation-
25 ship between Atari Corp. and Mr. David Ahl, wasn't a very good

1 relationship, was it?

2 A. In the beginning it was.

3 Q. Okay. Do you recall that Mr. Ahl, the publisher of
4 Atarian, was critical of Atari's approach and called it penny-
5 pinching?

6 A. Referring to what?

7 Q. Well, let me ask you. I'm not referring to anything sir,
8 I'm just asking you the question.

9 A. I don't recall. That's a general statement.

10 Q. Okay. Now, let me show you a document sir, that is
11 designated N-25. It's dated January 5th, 1988. It's from
12 David Ahl to Michael Katz and its subject is, saving money the
13 Atari way.

14 A. Would you like this back?

15 Q. No. Would you please hold onto it, sir.

16 A. Sure.

17 Q. I think you'll need it.

18 A. Okay.

19 Q. Now you see sir, the last line of this memorandum said,

20 "Just thought you'd like to know the real cost of
21 Atari's penny-pinching."

22 Do you see that?

23 A. Yes, I do.

24 Q. And this memorandum begins,

25 "Mike, the following are the effects of not

1 approving the various start-up expenses, about
2 10,000 that I submitted."

3 Do you see that?

4 A. Which line again? I'm sorry. I was reading the
5 document.

6 Q. Oh, okay. I was reading the first two lines.

7 A. I see the first two lines.

8 Q. Under subject, saving money the Atari way, Mr. Ahl said,
9 "Mike, the following are the effects of not approv-
10 ing the various start-up expenses, about 10,000 that
11 I submitted."

12 Right?

13 A. Yes, that's what it says.

14 Q. And he talks about the film and setup and charges. He
15 talks about a freeze-frame camera and an HQ. Is that a high
16 quality monitor?

17 A. I don't think so.

18 Q. Okay.

19 A. That's not a normal nomenclature for that type of
20 monitor.

21 Q. Okay. Then he talks about furniture and shelves. See
22 that?

23 A. Yes, I do.

24 Q. Now this he says, he's talking about setting up an office
25 for the new magazine. That was Atarian, right?

1 A. I would assume so.

2 Q. Okay. Now do you recall that Mr. Ahl, the publisher of
3 Atarian, stated that it was frustrating, humiliating, counter-
4 productive and indicative of the lack of trust for him to
5 constantly have to beg Atari for money to get the magazine
6 started?

7 A. You're asking me if I see that?

8 Q. No. I'm asking you if you recall that he said that.

9 A. I wouldn't doubt it. There was definitely a conflict of
10 interest here of Mr. Ahl and Atari.

11 Q. Okay.

12 A. And also the management approach was very, very
13 different.

14 Q. So you don't doubt that he said it. Let me show you
15 N-29. This is a memorandum from David Ahl to Mike Katz and
16 the subject is, finances (again ...).

17 Now you see that that memorandum begins, does it not,
18 "This constant need to beg for money is frustrating,
19 humiliating, counterproductive and indicative of a
20 lack of trust."

21 You see that?

22 A. Yes, there was a lack of trust.

23 Q. And he also pointed out the amount of money that he
24 needed with respect to one-time start-up expenses, right? And
25 ongoing monthly expenses, right?

1 A. That's what I see, yes.

2 Q. And he also said, as we go down to the last paragraph,
3 "I refuse to ask writers, artists, and vendors to
4 do work on the come. Nor do I want to have to come
5 to you every month, hat in hand, and beg for money
6 to keep going. I intend to run this magazine in a
7 professional ethical manner and I expect your trust
8 and support. Should it not be forthcoming, I will
9 not continue in the venture."

10 Do you see that?

11 A. I certainly see it.

12 Q. And as a matter --

13 A. Unfortunately it was not correct.

14 Q. Pardon me?

15 A. Unfortunately his statement was not correct.

16 Q. You don't think he did run the magazine in a professional
17 ethical manner, right?

18 A. Correct.

19 Q. And you did terminate him, right?

20 A. Absolutely.

21 Q. Okay. Now, --

22 A. When I found out that he was using a company that he
23 owned to supply services to the magazine without telling
24 us --

25 Q. Okay.

1 A. -- and overcharging us a lot of money --

2 Q. Okay.

3 A. -- I terminated him.

4 Q. All right, that is your testimony as to why he was
5 terminated, right?

6 A. Correct.

7 Q. You've just given, I didn't ask the question but you've
8 given the testimony, so that will save me asking that later.

9 Now sir, during the period that the Atarian was being
10 published by Atari with Ahl and Staples in charge, they were
11 continuing to put out the Atari Explorer for Atari, right?

12 A. Correct.

13 Q. And they continued to put out the Atari Explorer after
14 the Atarian magazine was cancelled, right?

15 A. For a short while after, yes.

16 Q. Okay. Now the Atarian had paid advertisement, right?
17 Paid advertisements, right?

18 A. Yes, some.

19 Q. Well, you looked -- they were trying to get paid ads for
20 Atarian, right?

21 A. Yes.

22 Q. Okay. Now I want to ask you about some of the efforts
23 to obtain ads. I want to show you Exhibit N-33. That's a
24 January '89 letter from Mr. Ahl, and it says, "Dear Prospective
25 Advertiser".

1 Now at this point in time, Mr. Ahl was being paid on a
2 monthly basis by Atari Corp., is that right?

3 A. I'm quite sure he was, yes.

4 Q. Was he paid as a regular employee?

5 A. I think he was paid for half-time work.

6 Q. Half-time.

7 A. I think.

8 Q. So he could do some other things on his own time, right?

9 A. Yes.

10 Q. Okay, but he was paid a half-time rate at Atari Corp.?

11 A. I think that's correct.

12 Q. All right. Now he says in this letter that Atari
13 emphasized, this is as of January '89, that there are more
14 than 26 million Atari video games systems, 2600, 7800, XE in
15 homes around the world. More than twice as many as Nintendo,
16 Sega and all the other manufacturers combined.

17 Do you see that?

18 A. Yes, I do.

19 Q. Now, was that an accurate statement as of January 20,
20 1989?

21 A. Give me a minute to do some math and I'll tell you if it
22 was an accurate statement or not.

23 (Pause.)

24 No, that was not an accurate statement.

25 Q. Okay. Now the first issue of Atarian sir, was dated

1 May/June 1989, wasn't it?

2 A. That sounds correct. It was the spring of '89.

3 Q. And you've testified it was cancelled after three issues,
4 right?

5 A. Correct.

6 Q. And you participated in the decision to cancel it, didn't
7 you?

8 A. Yes, I did.

9 Q. Now did Atari Corp. ever notify any subscribers that the
10 magazine had been cancelled?

11 A. We tried to, but Mr. Ahl owned the company which had the
12 mailing list, Seal Beach Company, and we could not get the
13 mailing from him. So when people called and asked for the
14 magazine, we either reimbursed their money or we gave them
15 something in kind to make them satisfied.

16 Q. Let me ask you sir to look at page 1412 of your
17 deposition.

18 A. In this one here?

19 Q. I believe it's in that volume, right in front of you,
20 sir.

21 A. What page again?

22 Q. 1412, line 1. Do you see that?

23 A. Yes, I do.

24 Q. I asked you this, this was June 19, 1991, let me break
25 the question up, sir.

1 "Did Atari Corp. ever notify every subscriber to
2 Atarian magazine that the magazine had been can-
3 celled?"

4 You answered,

5 "I don't recollect."

6 I then ask you,

7 "Did you direct that a program be developed to
8 notify every subscriber that the magazine had been
9 cancelled?"

10 And you answered,

11 "I don't recollect."

12 I then asked,

13 "It is a fact, isn't it Mr. Tramiel, that Atari
14 never notified subscribers that the magazine had
15 been cancelled, unless they complained about not
16 receiving issues?"

17 And you answered,

18 "If I recollected it, I would have been happy to
19 tell you that. So I don't know if it was factor,
20 if it not a fact."

21 See that?

22 A. Yes, I do see that.

23 Q. Okay. Now it's also the truth, is it not Mr. Tramiel,
24 that Atari did not furnish subscribers with a refund of the
25 balance of the their subscription money, unless the subscriber

1 wrote to Atari --

2 A. Excuse me. I didn't understand the first part of your
3 question. I didn't hear the word --

4 Q. Okay.

5 A. -- not further? I'm not sure what you said.

6 Q. Okay. Isn't it also the truth, Mr. Tramiel, that Atari
7 did not furnish subscribers with a refund of the balance of
8 their subscription money, unless the subscriber wrote to Atari
9 and requested it?

10 A. Either wrote or phoned in, correct, because we couldn't
11 get the mailing list from Mr. Ahl.

12 Q. Is the fact, is the answer yes?

13 A. The answer is that we -- if people called or phoned in,
14 we would refund their money, or give them a free cartridge,
15 or some other way of satisfying them.

16 Q. Indeed, Mr. Tramiel, it's a fact is it not, that over a
17 year after the time Atarian had stopped publishing, elapsed
18 before a program was developed to compensate subscribers to
19 Atarian magazine, right?

20 A. I don't think so.

21 Q. Well, let me show you a document that is N-52. This is
22 on Atari Explorer the official journal letterhead. It is to
23 Sam Tramiel from John Janeshnig.

24 A. Jainschigg.

25 Q. Jainschigg?

1 A. That's the way he pronounces it.

2 Q. Thank you. Now sir, Mr. Jainschigg is the person who is

3 now the publisher of Atari Explorer, right?

4 A. Correct. He is now in charge of publishing the magazine.

5 Q. Okay.

6 A. I think he's the publisher.

7 Q. And he wrote this to you, sir, did he not, to tell you

8 that you needed to develop a program to refund money to the

9 subscribers to Atarian?

10 A. Are you pointing out a certain part of the letter to me

11 or are you asking just generally?

12 Q. Well sir, in general, isn't that what this letter is

13 about?

14 A. I haven't read the letter but I'll be happy to read it,

15 if you want me to, to refresh my memory.

16 Q. Sure, would you read the letter.

17 A. Sure.

18 (Pause.)

19 Q. Let me ask you, look at the second --

20 A. I haven't finished reading the letter. I'm sorry.

21 Q. Okay. Let me --

22 A. I'm a slow reader.

23 Q. Let me ask you some questions as we go through it.

24 A. But I'm --

25 Q. Do you know who Madeline Gordon is? That's the second

1 paragraph.

2 A. Mr. Kirby, I didn't finish reading it.

3 Q. I understand.

4 A. Do you want me to read it or not?

5 Q. Let me ask you about the second paragraph, sir. Do you
6 know who Madeline Gordon is?

7 A. Yes, I do.

8 Q. And who is Madeline Gordon?

9 A. When she worked at Atari, she was involved in the sales
10 area of video games.

11 Q. Okay. Now, do you know who Don Thomas is?

12 A. Yes, I know Don Thomas.

13 Q. Who is Don Thomas?

14 A. He's a man who works at Atari.

15 Q. Okay and is it fair to say -- you read the second
16 paragraph?

17 A. You didn't let me finish reading it.

18 Q. Have you read the second paragraph?

19 A. I was just getting to finishing it, yes.

20 Q. All right. Well, why don't you finish the second
21 paragraph.

22 (Pause.)

23 A. Yes, I've finished reading it.

24 Q. All right. Now, Mr. Jainschigg is complaining or stating
25 that his various memoranda on the Atarian problem had

1 apparently not been passed on in a more direct and timely
2 fashion, right?

3 A. He's stating that, correct.

4 Q. Yes and then he goes on, we can read this together,

5 "Anyway, now that Madeline and I have passed the IQ
6 test, I thought it might be worthwhile to mention
7 some problems I discern in the approach Atari is
8 taking to Atarian refunds, and offer an alternative
9 solution. The big problem is that Atari doesn't
10 have the Atarian list, which means Madeline has to
11 go through all sorts of checking, and phoning, and
12 first class mail, et cetera, to confirm refunds.
13 Handling this on a case-by-case basis is really not
14 cost effective. However, all that's required to
15 really screw it up, is for the word to somehow get
16 out that Atari will send you a free game if you tell
17 them you were an Atarian subscriber."

18 And it says,

19 "Besides the law says something about being obliged
20 to inform subscribers collectively about any refund
21 program. So Atari is still not in full compliance."

22 See that?

23 A. Yes, I see that.

24 Q. And see he also says to you, in the second page of the
25 letter,

1 "Instead of all this hard work, why don't you let
2 me weasel the names out of Betsy and David?"

3 And that's Betsy Staples and David Ahl, right?

4 A. Yes.

5 Q. "It will cost something but probably not the
6 punishment rates they offered to charge you."

7 See that?

8 A. Yes, I do.

9 Q. It says,

10 "In most cases we're liable for only three issues,
11 plus the names would swell my circulation."

12 That's of the Explorer, right?

13 A. Right.

14 Q. "And let me pull down game related advertising."

15 You see that?

16 A. Yes, I do.

17 Q. Then he proposes that he's going to pick up the Atarian
18 logo, stick it in front of 12 or so pages of game system
19 coverage he's already got slated for the issue, and call it
20 an Atarian mini-magazine, right?

21 A. Creating an Atari mini-magazine.

22 Q. Okay and he'll,

23 "....stick a banner on the cover identifying it as
24 such and the kids will essentially be getting what
25 they were getting from Atarian, minus the crappy

1 comic art and puzzle pages. So they should be
2 thrilled and it gets the problem off Sunnyvale's
3 plate probably far cheaper in the long run than
4 working Madeline's fingers to the bone. It also
5 puts us in compliance with the law and let's us
6 solve the problem without any risk of getting ripped
7 off. What say you?"

8 Well, Mr. Tramiel, what say you?

9 A. Is that a --

10 Q. Yes.

11 A. I'm not sure I understand your question.

12 Q. That's what Mr. Jainschigg asked. He wrote this to you
13 and he ended up, "What say you?" I'm asking, what did you
14 say?

15 A. To Mr. Jainschigg?

16 Q. Yeah.

17 A. I don't recall exactly. I think I asked him if he could
18 get the mailing list from Betsy Staples and David Ahl for a
19 reasonable price, that we would do that, but I would not be
20 blackmailed by David Ahl, as he had a major conflict of
21 interest. He had a company called Seal Beach Company.

22 Q. I thought you already told us about that.

23 A. I'm just reconfirming.

24 Q. All right.

25 A. You asked me a question of what I told Mr. Jainschigg.

1 Q. That's --

2 A. Do you want me to answer that question?

3 Q. Did you -- let me, sir, see if we can help each other out
4 here. Let me ask you this --

5 A. I'm trying to answer you question, Mr. Kirby.

6 Q. Did you adopt the program that Mr. Jainschigg proposed
7 in this letter that we've just read?

8 A. I don't recall if we got the mailing list from Mr. David
9 Ahl or not. So I can't tell you if we adopted the program
10 exactly like he mentions it.

11 Q. Okay.

12 A. We did go ahead and we did put the video games coverage
13 into the Explorer magazine. We have a section in the Explorer
14 magazine for video games.

15 Q. Um-hmm.

16 A. We did do that. We did give money back to people. We
17 did give some people free games and other Atari product, to
18 satisfy their subscriber costs.

19 Q. Yes, sir. Let me --

20 A. So I guess we did quite a few of them.

21 Q. Let me ask you this, is it fair to say that the Atari
22 Explorer now has been returned to the kind of joint coverage
23 of video games and computers that it had prior to the ill-
24 fated founding of the Atarian magazine?

25 A. I think in the early issues of the Explorer we did not

1 have very many video game articles, on home video games.
2 There was more video games on the computer side.

3 After the Atarian magazine, they integrated home video
4 game articles into the Explorer magazine.

5 Q. Okay.. Now sir, it's true is it not, that Atari received
6 complaints from consumers that they had not received any
7 refund of their subscriptions after Atarian was cancelled,
8 right?

9 A. I'm sure we would have and we can fix that, those
10 problems.

11 Q. And it's true, is it not, that as late as July 1990,
12 Atari was still getting complaints from subscribers who had
13 not received refunds, right?

14 A. Probably, we didn't have the mailing list to go after
15 them directly.

16 Q. Okay.

17 A. It was being held hostage.

18 Q. Now sir, you agreed that Mr. Ahl and Ms. Staples, with
19 whom you had problems, continued to publish the Atari Explorer
20 after the Atarian magazine was cancelled in 1989, right?

21 A. Correct, for some period after, yes.

22 Q. Now sir, as a matter of fact, the March/April issue of
23 1990 for the Atari Explorer was never published, was it?

24 A. I think it was published. I'm not positive.

25 Q. Let me show you N-46, sir.

1 (Pause.)

2 I'm going to show you a copy of an editorial from Atari
3 Explorer spring 1990 issue. That's headed, Whatever Happened
4 to the March/April Issue?

5 Does that refresh your recollection that the March/April
6 issue of the Atari Explorer magazine was never published?

7 A. Correct, it refreshes my memory.

8 Q. Okay.

9 A. It was published at some later date, the same magazine,
10 the same issue.

11 Q. Well sir, as a matter of fact, that's not correct is it?
12 What happened is the Atari Explorer was published not four
13 times but three times during 1990 and the subscribers were
14 given an extra issue the following year, right?

15 A. That's probable, but this actual issue was issued later
16 on.

17 Q. Okay.

18 A. That's what I was saying. So I was correct.

19 Q. So you mean the actual issue with the contents that was
20 supposed --

21 A. Yes, that's what I said before.

22 Q. -- to be in the March/April issue, was issued as the
23 Atari Explorer's spring issue, is that right?

24 A. Less this editorial, it was published.

25 Q. Less the editorial. Now this editorial was prepared it

1 says by, Betsy Staples, right?

2 A. That's what it says.

3 Q. And in this editorial Ms. Staples wrote for the edifica-
4 tion of the subscribers of the Atari Explorer an explanation
5 of why the March/April issue didn't arrive. Excuse me, let
6 me correct myself. Why the January/February issue didn't
7 arrive, right?

8 A. I haven't read the -- you want me to read this?

9 Q. All right, let's look at it together, sir. This begins,
10 "You may or may not have noticed that the issue of
11 Atari Explorer you hold in your hand is dated spring
12 1990 rather than March/April 1990, as you might have
13 expected, if you remembered that the last issue
14 received was dated January/February 1990."

15 Right?

16 A. That's what --

17 Q. "You may also remember that your last issue arrived
18 ... quite a bit later than you expected it to."

19 It goes on,

20 "Well, these phenomena are related. Related but not
21 indicative of impending demise or disaster and we
22 are not" and not is italicized, "trying to cut
23 corners to save money in our death throws, as you
24 may have seen other magazines do."

25 Then it goes on,

1 "We are simply trying to minimize the damage done
2 to our dealers and our advertisers by one penny-
3 pinching sycophant in Atari's accounting
4 department."

5 Do you see that?

6 A. Yes, I do.

7 Q. Do you know who the penny-pinching sycophant referred to
8 in the editorial is?

9 A. Absolutely not.

10 Q. It goes on,

11 "It all started with an overdue print bill for the
12 now defunct Atarian, not Explorer."

13 Now the Atarian is the video game magazine, right?

14 A. It was, yes.

15 Q. It was. The one that was cancelled after three issues.

16 It says,

17 "Certain managers in Sunnyvale, apparently feeling
18 little obligation to pay for the printing of the
19 last issue of a magazine they had chosen to discon-
20 tinue, ignored the bill for an unconscionable
21 period. The printer justifiably using the only
22 leverage he had, refused to put the January/February
23 issue of Explorer into production until the bill was
24 paid."

25 You see that?

1 A. Yes, I do.

2 Q. It says,

3 "Finally, after protracted negotiation, someone
4 agreed to pay the bill and the presses started to
5 roll, only to be brought to a screeching halt when
6 the agreed upon payment was not received on
7 schedule. Several calls to corporate headquarters
8 later, we learned that the check had been cut, but
9 that the aforementioned penny-pincher seeking
10 perhaps to earn a few Brownie points with the
11 rabidly anti-Fed Ex Tramiels, or perhaps just
12 because to such people petty nastiness is its own
13 reward, had dropped the envelope containing it into
14 the chaotic maelstrom that is the first class mail
15 stream during the weeks before Christmas. The
16 upshot of all this is that the January/February
17 issue was a month late being shipped to newsstands
18 and subscribers."

19 You see that, sir?

20 A. Yes, I do.

21 Q. Now, is it accurate to characterize the Tramiel portion
22 of the Atari Corp. management as rabidly anti-Fed Ex?

23 A. Absolutely not. We spent about \$35,000 a year at that
24 time on Fed Ex bills and today I think it's up to \$50,000 on
25 Fed Ex shipments.

1 Q. By the way --

2 A. I wouldn't call that rabidly anti-Fed Ex, but we are
3 trying to conserve our money and keep a low overhead, and not
4 to waste money on Fed Ex. That's absolutely correct.

5 Q. Let me ask you this sir, did you ever pay Mike Katz for
6 making the shipment of the 7800 to the mid-West?

7 A. I'm happy you asked that question. I did go back in the
8 records and check. Yes, we did pay back the \$52.40 to Mike
9 Katz.

10 Q. After he sent you the memo, right?

11 A. Absolutely correct.

12 Q. Okay. Did you ever call in your brother, Mr. Garry
13 Tramiel, and tell him that the way he had treated Mr. Katz was
14 inappropriate?

15 A. I called in Mr. Katz and Garry both, and for Mr. Katz to
16 plan his requirements --

17 Q. I'm sorry. I can't understand you.

18 A. Then I'll speak slower.

19 Q. Let's go back to Mr. Katz.

20 A. I called Mr. Katz and Garry Tramiel into my office and
21 told both of them, one, that Garry should be more reasonable
22 and let shipments go out like that.

23 I also put Mr. Katz on the approval list, that Mr. Katz
24 could ship out Fed Ex shipments by himself, and also told Mr.
25 Katz that he should plan ahead more often, not to have these

1 last minute panic for shipments.

2 Q. Okay and you cut him a check?

3 A. I didn't cut it for him but the accounting department cut
4 it for him.

5 Q. Is -- can you think sir, now that we've gone over to Mr.
6 -- your response to Mr. Katz's memo, is there any basis that
7 you know of why the Atari Corp. part-time employees, Ms.
8 Staples and Mr. Ahl would have concluded that you were rabidly
9 anti-Fed Ex?

10 A. First of all, Ms. Staples, I think was a full-time
11 employee.

12 Q. I'm sorry.

13 A. And David Ahl was part-time.

14 Q. She was a full-time employee of Atari Corp.?

15 A. Yes, not a part-time.

16 Q. Okay and Mr. Ahl was a half-time employee, right?

17 A. Correct.

18 Q. Okay. Do you have any understanding, and I'm not asking
19 you to speculate, but do you have any understanding of any
20 basis for this Atari Corp. employee, Betsy Staples, who is
21 writing editorials for Atari Explorer concluding that the
22 Tramiels are rabidly anti-Fed Ex?

23 A. Ms. Staples was not working in the corporate environment.
24 She was not giving us the invoices on time from her suppliers.

25 Q. I'm sorry, she was not?

1 A. Giving the invoices on time --

2 Q. Yes.

3 A. -- to the corporate office to pay them on time.

4 Q. Um-hmm.

5 A. She was not giving them backup for these payments.

6 Q. And so she wasn't getting paid in her view, on time,
7 right?

8 A. She was getting paid on time.

9 Q. But your suppliers weren't getting paid on time?

10 A. Because we didn't have the proper paperwork.

11 Q. I see and did you ever --

12 A. And they were paid and Mack Printing, who is referred to
13 in this editorial, is still the printer of the Explorer
14 magazine as of today's date.

15 Q. Okay. Let me ask you sir, if you recall receiving
16 Exhibit N-294. This looks a little bit like a hostage note.

17 A. Yes. I remember you showing it to me in my deposition.
18 As I mentioned then, I do not recall receiving it. I never
19 saw it before the deposition.

20 Q. And this is -- refers to the same issue that is now
21 represented by this editorial, right? The spring 1990 issue.

22 A. Yes and the same Mack Printing that we use today to
23 publish, to print the Atari Explorer magazine.

24 Q. And it says the -- this was sent by Mack Printing.

25 "The spring 1990 issue of Atari Explorer, the

1 official Atari journal, is being held hostage. If
2 you want to see your magazine alive, send \$32,957.86
3 to Mack Printing Company today."

4 A. You're asking me if Mack Printing sent this?

5 Q. Yes.

6 A. I have no idea who sent it. I didn't receive it.

7 | Q. Did --

8 A. I doubt it was Mack Printing. That's not a very profes-
9 sional way of doing business.

10 Q. Okay. Let me ask you sir, was \$32,957.86 sent to Mack
11 Printing in payment of their bill?

12 A. I would have to assume so, since we still deal with Mack
13 Printing. *

14 Q. Was it sent Federal Express?

15 A. I have no idea.

16 Q. Okay. Now as a matter of fact --

17 A. We don't normally send our checks out by Federal Express.
18 We normally use the U.S. Mail Service for sending checks out.

19 Q. Okay. Excuse me one second.

20 (Pause.)

21 I'm trying to find my copy of the hostage note.

22 A. You can have my copy back.

23 Q. Well, sir is it your testimony that you didn't see this
24 before I showed it to you at your deposition?

25 A. That's what I remember.

1 Q. Now let me ask you to look at your deposition. I think
2 you have this in front of you, Volume 7. Do you still have
3 that there?

4 A. I have Volume 6.

5 Q. Okay. Could I have Volume 7 please? Thank you.

6 I refer you to page 1440 and specifically to line 11.
7 Sir, I -- we don't seem to have another copy readily avail-
8 able. If you don't mind, let me read over your shoulder.

9 That --

10 A. You can read it, no problem.

11 Q. All right. I asked you,

12 "Mr. Tramiel, would you examine this document?"

13 Which continues,

14 "If you want to see your magazine alive, send
15 \$32,975.86 to Mack Printing Company today. Have you
16 ever seen this document before?"

17 And you answered,

18 "I think so, because it's quite unusual print."

19 Right?

20 A. That's what is says.

21 Q. Does that refresh your recollection that at the time of
22 your deposition, you thought you'd seen this hostage note
23 before?

24 A. Yes, it does.

25 Q. Okay. Now, let me ask you this sir, this editorial that

1 Ms. Staples wrote, was in a copy of Atari Explorer magazine
2 that arrived in Sunnyvale, right?

3 A. I think so.

4 Q. And it was called to your attention, is that correct?

5 A. I think it was. I recall it was.

6 Q. And you directed that this editorial be pulled and
7 another editorial substituted, right?

8 A. I'm not sure if I did that or someone else in the company
9 did that, but it definitely happened. We definitely pulled
10 that editorial and put a new one in.

11 Q. And you did that because you believed the editorial was
12 untrue?

13 A. I believed it was an unprofessional method of having an
14 editorial in a Atari magazine.

15 Q. Let me ask you --

16 A. Complaining against the company itself.

17 Q. Let me ask you again sir, were the facts set out in the
18 Atari Explorer spring editorial by Ms. Staples, true?

19 A. I would have --

20 MR. KHOURIE: Well, Your Honor, I'm going to object
21 to that. This is a long editorial that Mr. Kirby seems to
22 want to read sentence by sentence.

23 THE COURT: That's fair enough.

24 MR. KHOURIE: By a disgruntled former employee and
25 to ask that question about every statement in there is unfair.

1 MR. KIRBY: All right. Let me --

2 THE COURT: Let me just also say, each of you, well
3 Mr. Kirby didn't this time, although it has come up at various
4 other times, I would like an end to speaking objections from
5 everybody.

6 State your objection, state the legal ground. As
7 far as I know, there are no legal grounds that take more than
8 three words. I will rule, we will move on. Okay.

9 MR. KIRBY: Thank you, Your Honor.

10 BY MR. KIRBY:

11 Q. Let me, just so that we can make sure the record is
12 clear, as of the time Ms. Staples wrote this editorial, she
13 was not a disgruntled former employee of Atari Corporation,
14 was she?

15 A. No. She was just a disgruntled dishonest employee of
16 Atari Corporation.

17 Q. She was a full-time employee of Atari Corporation, right?

18 A. A full-time dishonest employee of Atari Corporation.

19 Q. A full-time dishonest employee of Atari Corporation, is
20 that what you said?

21 A. Correct.

22 Q. And during -- she continued to work for Atari after the
23 Atarian magazine was cancelled and after this editorial was
24 included in the Atari Explorer magazine, right?

25 A. For some period, yes. I'm not sure when she was let go.

1 Q. Okay and sometime after this you did decide to close the
2 magazine publishing facilities down in New Jersey, right?

3 A. Under their control, correct.

4 Q. Okay. Now, let me ask you sir, to look again at -- I'm
5 sorry, not to look again.

6 Let me ask you to look at a memorandum from Mr. Ahl to
7 Mr. Liguori with a copy to you entitled, Death of Atari. It's
8 dated August 4th, 1989, and the Exhibit No. is N-40. Now, who
9 is Mr. Liguori?

10 A. Presently?

11 Q. Who was -- what were his duties as of August 4th, '89?

12 A. He might have been at that time the administrative
13 manager of Atari U.S.

14 Q. Okay. Now there's handwriting at the top of this, right
15 sir?

16 A. Yes, there is.

17 Q. And that's your handwriting, right?

18 A. Yes, it is.

19 Q. And you are writing to Ron Stringari and Martin, and
20 that's Martin Morrow?

21 A. Correct.

22 Q. And you say,

23 "I do want an Atarian. How do we do a new one?"

24 And your initials, is that right?

25 A. That is correct.

1 Q. And between August 4th, 1989, and today, Atari has not
2 published a magazine that is devoted exclusively to video game
3 products, has it?

4 A. That is correct.

5 Q. Okay. Now let me ask you sir, to tell me whether you had
6 reached a conclusion in August of '89, this is well before the
7 March/April '90 editorial of Ms. Staples, that the Atarian was
8 a failure.

9 A. It wasn't a question of it being a failure. It was a
10 question of how much money did we have to spend in marketing
11 in the video game area. Our sale of '89 on the 7800 had gone
12 down to almost nothing.

13 Q. Um-hmm.

14 A. And Mr. Katz suggested before he left, that we would not
15 spend money on the Atarian magazine as stand-alone issue. So
16 when I wrote this memo to Ron Stringari and Martin Morrow, I
17 was asking, how do we continue the Atarian idea, going
18 forward? And we came up with the idea of including it into
19 the Atari Explorer magazine.

20 Q. I see.

21 A. In one combination of a computer magazine and a video
22 game magazine.

23 Q. So as far as you were concerned, the Atarian magazine was
24 cancelled because it cost too much, right?

25 A. Well, we didn't have a big enough ongoing sales on the

1 7800. Our sales were decimated in the marketplace.

2 Q. Okay.

3 A. We couldn't keep on selling the machine. So if we can't
4 sell the machine, you don't have a product, why should you
5 have a magazine for it?

6 Q. All right. So you decided in 1989 to start the project.
7 You solicit subscribers and within a period of a few months,
8 you cancel it, right?

9 A. No. I think we decided to go ahead with the project
10 sometime in late '88, as an idea when sales were still going
11 at some rate, and then in '89 sales went away dramatically.

12 Q. Okay

13 A. And we did come out with a few issues and there just
14 wasn't any marketplace to sell the magazine into.

15 Q. All right and Mr. Ahl and Ms. Staples were kept on to do
16 Atari Explorer until sometime in 1990 and then they were
17 replaced, right?

18 A. Yes. After we found out about the improprieties that
19 were taking place, they were let go.

20 Q. Okay. All right. Let me ask you some questions about
21 one of your home video game systems, sir. I -- as I under-
22 stand, the XE system was announced eight months after Atari
23 actually introduced the 7800 system, right?

24 A. I think it was announced at the February '87 Toy Fair.

25 Q. Right.

1 A. We started shipping sometime after that.

2 Q. Right. It was announced at the February '87 Toy Fair and
3 as of July '86, as we saw this morning, you had approximately
4 7,000 7800's in the market, right?

5 A. Correct.

6 Q. And the XE system, so we're clear on this, was a combina-
7 tion of a -- it sold as a combination video game player with
8 a computer keyboard on which the user could actually undertake
9 computer functions, right?

10 A. If he took that option, yes he could, or she could.

11 Q. If he took what?

12 A. If he took that option, yes he or she could play --

13 Q. Okay.

14 A. -- or use it as a computer.

15 Q. And Atari Corp. had virtually no development costs for
16 the XE, did it?

17 A. When you say virtually none, I would guess that we
18 probably invested probably \$100,000 is my guess sitting here
19 today.

20 Q. Okay and that's because the guts of the XE video game
21 system was an old Atari computer, right?

22 A. It was a derivative of the 8-bit Atari line of computers.

23 Q. And that was called the XE line of computers?

24 A. I think it first came out as the Atari 400, 800 --

25 Q. I see.